Datuk Bandar Kuala Lumpur v Cheang Kok Yuen

HIGH COURT (KUALA LUMPUR) — ORIGINATING SUMMONS NO 24F-890–07 OF 2013
YEOH WEE SIAM J
10 JANUARY 2014

Civil Procedure — Public auction order — Order for sale of property — Realisation of amount of arrear of rate or assessment owed to local authority — Application made under s 151 of the Local Government Act 1976, s 257 of the National Land Code and O 31 of the Rules of Court 2012 — Applicant had issues Forms E, F and H — Whether there was evidence that applicant had made inventory of property attached — Whether defendant paid arrear and costs

In the present application, the plaintiff sought for an order for sale of the defendant's property by public auction in order to realise the amount of arrear of rate or assessment ('the arrear') owed to the plaintiff by the defendant under s 151(3) of the Local Government Act 1976 ('the LGA'). The application was made under s 151 of the LGA; s 257 of the National Land Code ('the NLC'); and O 31 of the Rules of Court 2012 ('the ROC'). The plaintiff had issued Forms E, F and H. However, there was no evidence that the plaintiff had made an inventory of the property attached; issued Form G to the defendant; and given an opinion that the value of the movable property to be attached was of a lesser value than the arrear to be recovered or there was no movable property to be attached, before it proceeded to issue Form H. There was also no proof that the defendant had failed to pay the arrear and costs within seven days from the date of attachment of the property and pursuant to that the plaintiff had sold the defendant's property that was attached by public auction under s 149 of the LGA. In this case, the plaintiff had opted to proceed under s 148 of the LGA when it issued Forms E, F and but it did not issue Form G.

Held, dismissing the plaintiff's application with liberty to file afresh:

(1) The plaintiff had not fully-complied with the requirements of ss 148(1) and (2) and 149 of the LGA. Therefore, the plaintiff was not allowed to proceed further under s 151 of the same Act to make this application for an order for sale (see para 15).

(2) The amount of arrear in the present case was small. It was not just or reasonable to order the public auction of the defendant's holding, which value was far in excess of the amount of arrear, to enable the plaintiff to recover the arrear. The plaintiff had failed to prove that the application made for the sale of the defendant's holding was necessary or expedient

for the purpose of the plaintiff for recovery of the arrear. Therefore, the court did not deem it fit to exercise its power in this case under O 31 r 1 of the ROC to order a sale of such holding (see paras 18–19).

(3) Order 31 r 1 of the ROC should be considered together with the provisions of substantive law regarding the matter, and in this case, the provisions of the LGA in particular ss 148, 149 and 151 of the LGA. Sections 148 and 149 of the LGA must be complied with in full by the plaintiff first before it could apply to the court to exercise its powers under O 31 r 1 of the ROC (see para 20).

(4) (the plaintiff?) The defendant, being a local authority and not a financial institution, failed to prove to the satisfaction of this court that it was 'a chargee' pursuant to a registered charge within the meaning of the NLC. There was no proof that the defendant owed the arrear to the plaintiff under a registered charge executed by the defendant, as chargor. There was no charge involved in the present case. The arrear owed by the defendant was merely an arrear of rate assessed by the defendant(plaintif?) for the holding owned by the defendant under the LGA. As such, it was legally wrong and rather absurd for the defendant to invoke and rely on s 257 of the NLC when clearly the provisions of ss[a0]253, 254, 255, 256 and 257 of the NLC could not apply here in the first place (see para 26).

(5) The court was unable to agree with the view that the arrear of the rate in this case created a charge between the plaintiff, as chargee, and the defendant, as chargor, and pursuant to such fiction, the defendant could now invoke s 257 of the NLC to apply for an order for sale. The plaintiff's action was dismissed not for want of form, but for want of substance ie for non-compliance with ss 148 and 149 of the LGA before proceeding to rely on s 151 of the same Act, and O 31 r 1 of the ROC. As such, s 158(2) of the LGA was not applicable and therefore could not be relied upon by the plaintiff (see paras 28 & 32).

[Bahasa Malaysia summary

Dalam permohonan ini, plaintif memohon untuk suatu perintah bagi penjualan harta defendan melalui lelongan awam untuk mendapatkan jumlah kadar tunggakan atau taksiran ('tunggakan') yang terhutang oleh defendan kepada plaintif di bawah s 151(3) Akta Kerajaan Tempatan 1976 ('AKT'). Permohonan itu dibuat di bawah s 151 AKT; s 257 Kanun Tanah Negara ('KTN'); dan A 31 Kaedah-Kaedah Mahkamah 2012 ('KKM'). Plaintif telah mengeluarkan Borang E, F dan H. Walau bagaimanapun, tidak ada bukti bahawa plaintif telah membuat inventori harta yang ditahan itu; mengeluarkan Borang G kepada defendan; dan memberikan pendapat bahawa nilai harta alih yang akan ditahan adalah nilai yang lebih rendah daripada tunggakan yang akan diperolehi semula atau tidak ada harta alih yang hendak

ditahan, sebelum ia meneruskan untuk mengeluarkan Borang H. Tiada juga bukti bahawa defendan gagal untuk membayar tunggakan dan kos dalam tempoh tujuh hari dari tarikh penahanan harta itu dan dengan demikian, plaintif telah menjual harta defendan yang ditahan melalui lelongan awam di bawah s 149 AKT. Dalam kes ini, plaintif telah memilih untuk meneruskan di bawah s 148 AKT apabila ia mengeluarkan Borang E, F dan tetapi ia tidak mengeluarkan Borang G.

Diputuskan, menolak permohonan plaintif dengan kebenaran memfailkan semula:

(1) Plaintif telah tidak mematuhi sepenuhnya kehendak ss 148(1) dan (2) serta 149 AKT. Oleh itu, plaintif telah tidak dibenarkan untuk meneruskan lagi di bawah s 151 Akta yang sama untuk membuat permohonan bagi suatu perintah jualan (lihat perenggan 15).

(2) Jumlah tunggakan di dalam kes ini adalah kecil. Ia tidak adil atau munasabah untuk memerintahkan lelongan awam atas pegangan defendan, yang jauh melebihi nilai amaun tunggakan bagi membolehkan plaintif untuk mendapatkan semula tunggakan itu. Plaintif telah gagal untuk membuktikan bahawa permohonan yang dibuat bagi penjualan pegangan defendan adalah perlu atau suai manfaat bagi maksud plaintif bagi mendapatkan tunggakan. Oleh itu, mahkamah tidak difikirkan patut untuk menjalankan kuasa dalam kes ini di bawah A 31 k 1 KKM untuk memerintahkan penjualan pegangan itu (lihat perenggan 18–19).

(3) Aturan 31 k 1 KKM perlu dipertimbangkan bersama-sama dengan peruntukan undang-undang substantif mengenai perkara itu, dan dalam kes ini, peruntukan dalam AKT terutama sekali ss 148, 149 dan 151 AKT. Seksyen 148 dan 149 AKT hendaklah dipatuhi sepenuhnya oleh plaintif sejak dari mula sebelum ia boleh memohon kepada mahkamah untuk menjalankan kuasanya di bawah A 31 k 1 KKM (lihat perenggan 20).

(4) Plaintif, yang merupakan suatu pihak berkuasa tempatan dan bukan institusi kewangan, gagal membuktikan dengan memuaskan hati mahkamah bahawa ia adalah 'chargee' menurut caj berdaftar dalam pengertian KTN. Tiada bukti bahawa defendan berhutang tunggakan kepada plaintif di bawah caj berdaftar dilaksanakan oleh defendan, penggadai. Tiada caj yang terlibat dalam kes ini. Tunggakan yang terhutang oleh defendan adalah semata-mata suatu kadar tunggakan dinilai oleh plaintif untuk pegangan yang dimiliki oleh defendan di bawah AKT. Oleh itu, adalah menyalahi undang-undang dan tidak masuk akal bagi defendan untuk membangkitkan dan bergantung kepada s 257 KTN apabila jelas peruntukan ss 253, 254, 255, 256 dan 257 KTN tidak boleh digunakan sejak dari mula (lihat perenggan 26).

(5) Mahkamah tidak dapat bersetuju dengan pandangan bahawa kadar tunggakan dalam kes ini membentuk caj antara plaintif, sebagai pemegang gadaian, dan defendan, penggadai, dan menurut fiksyen itu, defendan kini boleh membangkitkan s 257 KTN untuk memohon suatu perintah jualan. Tindakan plaintif telah dibuang bukan kerana bergantung kepada cara yang salah, tetapi kerana ketiadaan asas untuk tidak mematuhi ss 148 dan 149 AKT sebelum meneruskan untuk bergantung kepada s 151 Akta yang sama, dan A 31 k 1 KKM. Oleh itu, s 158(2) AKT tidak terpakai dan oleh itu tidak boleh digunakan oleh plaintif (lihat perenggan 28 & 32).]

Cases referred to

Ke Ka Tong v Datuk Bandar Kuala Lumpur [2008] 3 MLJ 234, CA (folld)
Puspavathy a/p Thav aveethu v Majlis Perbadanan Klang & Ors and other appeals [2008] 6 MLJ 672; [2008] 6 CLJ 626, CA (not folld)
Yong Hin Seong & Anor v Yong Teik Seong [2003] 6 MLJ 38, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 25(1), (2), Schedule, paras 3, 4, 9, 10
Limitation Act 1953 s 8(b)
Local Government Act 1976 ss 146, 146(1), (2) 148, 148(1), 149, 151, 151(3), 158(2), First Schedule, Forms E, F, G, H
National Land Code ss 5, 253(1), (3), 254, 255, 256, 256(2), (3), 257, 257(1), 340, Form 16H
Rules of Court 2012 O 31 r 1

Mahadi Nordin (Nizam Haswira & Partners) for the plaintiff.
Defendant not represented.

Yeoh Wee Siam J:

ENCLOSURE 1

[1] This is the plaintiff's application for an order for sale of the defendant's property by public auction in order to realise the amount of arrear of rate or assessment ('the arrear') owed to the plaintiff by the defendant, as the local authority, under s 151(3) of the Local Government Act 1976 ('the LGA').

THE COURT'S DECISION GIVEN ON 9 DECEMBER 2013 REGARDING ENCLOSURE 1

[1] The plaintiff's application is dismissed with liberty to file afresh. There is no order as to costs.

GROUNDS FOR COURT'S DECISION

[3] The plaintiff's application was made under the following legal provisions:

(a) s 151 of the LGA;

(b) s 257 of the National Land Code ('the NLC'); and

(c) O 31 of the Rules of Court 2012 ('the ROC').

Sections 148 and 149 of the LGA must be complied with first before s 151 of the same Act can be invoked

[4] In order to understand the intention of the Legislature and as to how ss[a0]148, 149 and 151 of the LGA should operate vis a vis each other, I now set out the respective provisions:

> *Proceedings for recovery of an arrear*
>
> 148(1) For the recovery of an arrear the local authority may issue a warrant of attachment in Form F of the First Schedule hereto and may seize by virtue thereof any movable property, belonging to the owner or occupier liable to pay the same, which is found within the local authority area and may also seize and any movable property, to whomsoever belonging, which is found on the holding in respect of which the arrear is due:
>
> Provided that no warrant of attachment shall be issued by the local authority unless it has served a notice, in Form E of the First Schedule hereto, posted or delivered to the owner or any one of the owners, if more than one, at the last known address, calling on him to pay the arrear within fifteen days of the posting or delivery.
>
> (2) The warrant shall be executed by an officer of the local authority who shall make an inventory of the property attached thereunder, and shall at the same time give notice in Form G of the First Schedule hereto, to the person in possession of the property at the time of attachment:
>
> Provided that where in the opinion of the officer executing the warrant the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached as in the case of a holding which is vacant or unoccupied no such inventory need be made and in such a case he shall affix a notice in Form H of the First Schedule hereto on some conspicuous part of the holding or any one of the holdings in respect of which the arrear is due to the effect that procedure for the recovery shall be instituted under section 151.
>
> (3)Such officer may break open in the daytime any house or building for the purpose of effecting such attachment.
>
> (4)The fee for a warrant of attachment shall be of such amount as the local authority may fix from time to time and shall be costs of the attachment.

Sale of property attached

149 (1) Unless the arrear which costs be paid within seven days from the date of the attachment the property attached or such part thereof as may be necessary shall be sold by public auction:

Provided that where the property seized is of a perishable nature or where expense of keeping it in custody will exceed its value it may be sold at once.

(2) The expenses of the maintenance of livestock and the custody of moveable property shall be costs of the attachment.;

Attachment and sale of holding

151 (1) If the arrear cannot be recovered in the manner provided in section 148 it shall be lawful for the Registrar of the High Court upon application made by the local authority, or by any officer of the local authority authorized by the local authority in that behalf, to order the attachment and sale of the holding or holdings in respect of which the arrear has accrued.

(2)Such attachment and sale may be effected in the manner provided by the law relating to civil procedure for the execution of a decree by attachment and sale of immovable property.

(3)The Registrar of the High Court shall, from the proceeds of sale, provide first for the costs of attachment and sale, then for payment to the local authority of the amount of the arrear, together with interest thereon at the rate of six per centum per annum and costs, and in the event of there being any surplus remaining the Registrar shall, if he is satisfied as to the right of any person claiming such surplus, pay the amount thereof to him, and if he is not so satisfied, shall place the amount on deposit in the Treasury to be held in trust for the person who may ultimately succeed in establishing his claim thereto.

(4)The local authority may in its discretion refrain from seizing and selling, or may release from attachment, any property lawfully seizable under section 148 where such property is the property of the occupier, being a tenant, of the holding or of a person not liable to pay an arrear due in respect of such holding.

(5)Where the property is the property of a tenant-occupier, the local authority shall refrain from seizing and selling or shall release from attachment such property:

Provided that the tenant-occupier pays to the local authority the rent of such holding as it falls due until the arrear is satisfied or until the termination of his tenancy and in any such case, notwithstanding anything contained in subsection (1), such holding may be attached and sold.

(6)The amount of any rent paid by a tenant-occupier to the local authority under subsection (5) may be deducted by such tenant-occupier from the next and following payments of rent to the owner of the holding.

[5] From s 148(1) of the LGA, it is clear that the first step that the defendant, as the local authority, should take in order to recover an arrear is to issue a warrant of attachment in Form F of the First Schedule to the LGA ('the First

Schedule') and seize the movable property of the owner or the occupier, who is liable to pay the arrear, which is found on the holding for which the arrear is due owing to the defendant.

[6] Before doing that, the defendant is required under the proviso to s 148(1) of the LGA to serve a notice in Form E of the First Schedule to the owner of the holding giving him 15 days from the date of the posting or delivery of the notice to pay the arrear.

[7] Under s 148(2) of the LGA, the warrant of execution shall be executed by an officer of the local authority who 'shall' make an inventory of the property attached. The officer 'shall' at the same time give notice in Form G of the First Schedule to the person in possession of the property at the time of attachment.

[8] According to the proviso to s 148(2) of the LGA, it is only when, 'in the opinion of the officer', that the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached, that the plaintiff can effect the procedure for the recovery of the arrear under s 151 of the Act ie by application to the registrar of the High Court for an order of attachment and sale of the holding in respect of which the arrear has accrued or is owing. But before doing that, the defendant is required to affix a notice in Form H of the First Schedule on a conspicuous part of the holding.

[9] In *Ke Ka Tong v Datuk Bandar Kuala Lumpur* [2008] 3 MLJ 234 the Court of Appeal at p 238, inter alia, held:

> [10] However, the opening words of s151 makes it imperative to find that it is the intention of the Legislature to require the local authority to first exhaust the mechanisms as provided in s 148 for the recovery of arrears outstanding due to it. The opening words read:
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> If the arrear cannot be recovered in the manner provided in s 148 it shall be lawful for the registrar of the High Court upon application made by the local authority,
>
> [11] In other words it is for the local authority to show that it has exhausted all the mechanisms as provided for in s 148 including the service of Form H given under the proviso of sub-s (2) of s148 when making an application under s 151.
>
> [12] Contrary to what was contended before us we do not think s148 or s 151 imposes upon the appellant or debtors of the local authority the duty to ensure that the local authority has done all that is required to be done under s 148.
>
> [13] Meanwhile, we are not saying that the local authority is not entitled to rely on other avenues to recover the arrears other than s148. That explains the use of the word 'may' in s 148. However, if it is inclined to rely on s 151 then the provisions of s 148 must be first observed. With respect we think the learned High Court judge erred when she ruled that s 148 did not apply in this case.

A [14] For the foregoing reason alone that we should allow the appeal.

[10] In *Puspavathy a/p Thavaveethu v Majlis Perbadanan Klang & Ors and other appeals* [2008] 6 MLJ 672; [2008] 6 CLJ 626, the Court of Appeal
B dismissed the first appeal and upheld the decision of the Shah Alam High Court in allowing an order for sale of the said land pursuant to ss 146, 148 and 151 of the LGA when the co-proprietors failed to pay the assessment rate amounting to RM21,887.

C **[11]** In my opinion, the decision of the Court of Appeal in *Puspavathy*'s case should be distinguished from *Ke Ka Tong*'s case. This is because the determinative issues for consideration in *Puspavathy*'s case are different from *Ke Ka Tong*'s case and they are regarding the following issues:

D (a) whether the non-service of the originating summons amounts to mere irregularity or a nullity;

(b) whether the eighth defendant's application is time-barred by virtue of s 8(b) of the Limitation Act 1953; and

E (c) whether s 340 of the NLC confers an indefeasible title on the second intervener (seejudgment of the Court of Appeal dated 11 September 2008 para 16 at p 8).

F **[12]** On the other hand, the issues in *Ke Ka Tong*'s case are regarding the application of ss 148 and 151 of the LGA. Thus, this court has decided that the decision in *Ke Ka Tong*'s case should appropriately apply to this case rather than the decision in *Puspavathy*'s case.

G **[13]** In the present case, the plaintiff had issued Forms E, F and H. However, there is no evidence that the plaintiff had:

(a) through its officer, made an inventory of the property attached;

(b) issued Form G to the defendant;
H

(c) through its officer, given an opinion that the value of the movable property to be attached is of a lesser value than the arrear to be recovered or there is no movable property to be attached, before it proceeded to issue Form H.

I

[14] There is also no proof that the defendant had failed to pay the arrear and costs within seven days from the date of attachment of the property and pursuant to that the plaintiff had sold the defendant's property that was attached by public auction under s 149 of the LGA.

[15] In this case, the plaintiff had opted to proceed under s 148 of the LGA when it issued Forms E, F and H. But it did not issue Form G. Accordingly, the court holds that the plaintiff has not fully complied with the requirements of ss 148(1) and (2), and 149 of the LGA. Therefore, the plaintiff is not allowed to proceed further under s 151 of the same Act to make this application for an order for sale.

The court is of the view that pursuant to O 31 r 1 of the ROC, the sale of immovable property by an order of the court in this case does not appear to be necessary or expedient

[16] Order 31 r 1 of the ROC provides as follows:

> Order 31
>
> SALES OF IMMOVABLE PROPERTY BY ORDER OF COURT Power to order sale of immovable property (O 31 r 1)
>
> (1) Where in any cause or matter relating to any immovable property it appears necessary expedient for the purposes of the cause or matter that the property or any part thereof should be sold, the Court may order that property or part to be sold, and any party bound by the order and in possession of that property or part, or in receipt of the rents and profits thereof, may be compelled to deliver up such possession or receipt to the purchaser or to such other person as the Court may direct.

[17] Regarding O 13 r 1 of the old Rules of the High Court 1980, which is in pari materia with O 31 r 1 of the new ROC, Malik Ishak J (as he then was) stated in *Yong Hin Seong & Anor v Yong Teik Seong* [2003] 6 MLJ 38:

> The root words would be attached to the words 'it appears necessary or expedient'. Those words must be the guiding force before the court makes an order that a particular property or part of it is to be sold. It is also a requirement that the court may order a sale of the property, like the present case, whenever it is necessary for the purposes of the action.

[18] The court notes that the amount of arrear in the present case is small ie RM9,804. It is not just or reasonable to order the public auction of the defendant's holding, which value is far in excess of the amount of arrear, to enable the plaintiff to recover the arrear.

[19] The plaintiff in this case has failed to prove that the application made before this court for the sale of the defendant's holding is necessary or expedient

for the purpose of the plaintiff for recovery of the arrear. Therefore, the court does not deem it fit to exercise its power in this case under O 31 r 1 of the ROC to order a sale of such holding.

[20] In my view, O 31 r 1 of the ROC should be considered together with the provisions of substantive law regarding the matter, and in this case, the provisions of the LGA in particular ss 148, 149 and 151 of the LGA. Sections 148 and 149 of the LGA must be complied with in full by the plaintiff first before it can apply to this court to exercise its powers under O31 r 1 of the ROC.

Section 257 of the NLC cannot be invoked since it is not applicable

[21] Section 257(1) of the NLC only provides for the matters to be dealt with by an order for sale, namely, that the requisite Form 16H shall, inter alia, provide for the sale to be by public auction and the particulars regarding the date of the sale and specification of the amount due to the chargee, the fixing of the reserve price by the registrar of the court and the manner of paying the purchase price after a successful sale by public auction.

[22] However, the substantive provision regarding an application to the court for an order for sale is found in ss 256(2) and (3) of the NLC which provide:

> 256(2) Any application for an order for sale under this Chapter by a chargee of any such land or lease shall be made to the Court in accordance with the provisions in that behalf of any law for the time being in force relating to civil procedure.
>
> (3) On any such application, the Court shall order the sale of the land or lease to which the charge relates unless it is satisfied of the existence of cause to the contrary.

[23] Sections 256(2) and (3) of the NLC provide for a situation where 'a chargee' applies to the court for an order for sale. Sections 256 and 257 of the NLC were enacted under Part 16 Chapter 3 of the NLC which deals with 'Remedies of Chargees: Sale'. This can be clearly seen in s 253(1) of the NLC which provides as follows:

> Purpose and scope of this Chapter
>
> 253(1) The provisions of this Chapter shall have effect for the purpose of enabling any chargee to obtain the sale of the land or lease to which his charge relates in the event of a breach by the chargor of any of the agreements on his part expressed or implied therein.

[24] In s 253(3) of the same Chapter, the term 'chargee' has been defined to include a financial institution.

[25] The term 'charge' in the Interpretation section in s 5 of the NLC means a registered charge. A

[26] The defendant, being a local authority, and not a financial institution, failed to prove to the satisfaction of this court that it is 'a chargee' pursuant to a registered charge within the meaning of the NLC. There is no proof that the defendant owed the arrear to the plaintiff under a registered charge executed by the defendant, as chargor. Clearly, there is no charge involved in the present case. The arrear owed by the defendant is merely an arrear of rate assessed by the defendant for the holding owned by the defendant under the LGA. As such, it is legally wrong and rather absurd for the defendant to invoke and rely on s 257 of the NLC when clearly the provisions of ss 253, 254, 255, 256, 257 of the NLC (all regarding an order for sale pursuant to the chargor's breach of the terms of the agreement for the charge) cannot apply here in the first place. B C

[27] Section 146 of the LGA provides as follows: D

> Rates to be first charge
>
> 146 All rates shall be paid by the persons who are owners of the holdings for the time being, and until so paid, subject to the National Land Code (Act 56 of 1965), be a first charge on the holdings in respect of which they are assessed, and if not paid within the prescribed time, shall be recoverable in the manner hereinafter prescribed. E

[28] I am unable to agree with the view that the arrear of the rate in this case creates a charge between the plaintiff, as chargee, and the defendant, as chargor, and pursuant to such fiction, the defendant can now invoke s 257 of the NLC to apply for an order for sale. F

[29] The term 'charge' has not been defined in the LGA but according to the *Oxford Compact English Dictionary*, (2nd Ed), the term 'charge', inter alia, means 'demand (an amount) as a price for service rendered or goods supplied'. G

[30] Applying the *Oxford Dictionary* meaning to s 146 of the LGA, it means that the local authority has the right to make the first demand on the holding should the holding be ever sold by public auction pursuant to s 257 of the NLC. However, s 146 of the LGA does not empower the local authority to apply for an order for sale under the NLC when there is no agreement on a charge (which charge should subsequently be registered) between the plaintiff and the defendant. In fact, s 146 of the LGA goes on further to provide that if the rate remains unpaid, it 'shall be recoverable in the manner hereinafter prescribed', which means as prescribed in ss 148, 149 and 151 of the LGA. Clearly, s 146 of the LGA does not provide for the local authority to recover the unpaid rate under s 257 of the NLC when there is no evidence of breach of the H I

terms of a registered charge by the defendant as a chargor.

Section 158(2) of the LGA is not applicable

[31] Section 158(2) of the LGA of the LGA provides:

> 158(2) No proceedings under this Part for the recovery of any rate shall be quashed or set aside in any court for want of form.

[32] In the present case, the plaintiff's action was dismissed not for want of form, but for want of substance ie for non-compliance with ss 148 and 149 of the LGA before proceeding to rely on s 151 of the same Act, and O 31 r 1 of the ROC. As such, s 158(2) of the LGA is not applicable and therefore cannot be relied upon by the plaintiff.

Sections 25(1) and (2) of the Courts of Judicature Act 1964 ('the CJA') and paras 3, 4, 9 and 10 of the Schedule to the same Act can only be invoked if the plaintiff complies with the provisions of the LGA, the NLC and the ROC

[33] Sections 25(1) and (2) of the CJA provide as follows:

> Powers of the High Court
>
> 25(1) Without prejudice to the generality of Article 121 of the Constitution the High Court shall in the exercise of its jurisdiction have all the powers which were vested in it immediately prior to Malaysia Day and such other powers as may be vested in it by any written law in force within its local jurisdiction.
>
> (2) Without prejudice to the generality of subsection (1) the High Court shall have the additional powers set out in the Schedule:
>
> Provided that all such powers shall be exercised in accordance with any written law or rules of court relating to the same.

[34] Paragraphs 3, 4, 9 and 10 of the Schedule to the CJA provide as follows:

> Partition of land
>
> 3 Power to direct a sale instead of partition in any action for partition of land; and in any cause or matter relating to land, where it appears necessary or expedient, to order the land or any part thereof to be sold, and to give all necessary and

consequential directions.

Sale of land

4 Power to order land to be charged or mortgaged, as the case may be, in any case in which there is jurisdiction to order a sale.

Writs of seizure and sale

9Power to enforce judgment of the Court for the payment of money to any person or into Court by a writ, to be called a writ of seizure and sale, under which all the property, movable or immovable, of whatever description, of a judgment debtor may be seized, except property which is exempt from seizure and sale under any written law.

Other execution

10Power to enforce a judgment of the court in any other manner which may be prescribed by any written law or rules of court.

[35] From the above provisions of the CJA, it can be clearly seen that the court's jurisdiction and power to grant an order for sale must be done in accordance with the requirements of any written law governing the matter. Where the plaintiff has failed to comply with the statutory requirements or provisions of ss 148, 149 or 151 of the LGA, s 257 of the NLC, or O 31 r 1 of the ROC, the court would not exercise its powers under the CJA to allow such application for an order for sale of the defendant's holding.

[36] Based on the above considerations, the court dismissed the plaintiff's application with liberty to file afresh.

TEST CASE

[37] It is to be noted that at the outset of the Hearing, counsel for the plaintiff has agreed and confirmed that this case is also a test case for Cases Nos 24FC-42–09 of 2013, 24FC-44–09 of 2013 and 24FC-46-09 of 2013 ('the other three cases'). The decision in this case binds the other three cases and automatically disposes of those cases.

Plaintiff's application dismissed with liberty to file afresh.

Reported by Afiq Mohamad Noor